Annual Survey of Massachusetts Law

Volume 1959 Article 22

1-1-1959

Chapter 18: Workmen's Compensation

Larry Alan Bear

CHAPTER 18

Workmen's Compensation

LARRY ALAN BEAR

A. Court Decisions

§18.1. "Arising out of" — "Scope of the employment." *Bator's Case,*[1] decided during the 1959 Survey year, finally sounded the death knell for the restrictive common law "scope of the employment" concept in Massachusetts. "Scope of the employment" is a phrase well known to the common law, and, narrowly interpreted, it refers solely to the inherent nature of the employment. On the other hand, the term "arising out of" the employment, used in almost all workmen's compensation statutes today, is not confined to the mere nature of the employment. It is, as stated by Lord Shaw over forty years ago, a broad new expression that "applies to the employment as such — to its nature, its conditions, its obligations, and its incidents." [2]

Perhaps the finest expression in American law of the important difference between the two terms is that put forth several years ago by Mr. Justice Frankfurter:

> As we read its opinion the Court of Appeals entertained the view that this standard precluded an award for injuries incurred in an attempt to rescue persons not known to be in the employer's service undertaken in forbidden waters outside the employer's premises. We think this is too restrictive an interpretation of the Act. Workmen's Compensation is not confined by common-law conceptions of scope of employment. . . . The test of recovery is not a causal relation between the nature of employment of the injured person and the accident . . . nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his

Larry Alan Bear is a partner in the firm of Bear and Bear, Boston, and a member of the Boston Bar Association Committee on Workmen's Compensation. He is also a member of the Massachusetts and American Bar Associations, a member of the National Advisory Council of the Law-Medicine Research Institute and former Vice-Chairman of the Medico-Legal Committee of the Junior Bar Conference of the American Bar Association.

The author wishes to acknowledge the research assistance of Paul F. Amico, a member of the Board of Student Editors of the Annual Survey, in preparation of Section B of this chapter.

§18.1. [1] 338 Mass. 104, 153 N.E.2d 765 (1958).
[2] Thomas v. Sinclair, [1917] A.C. 127, 142.

> employer. All that is required is that the obligations or conditions of employment create the zone of special danger out of which the injury arose.[3]

The long history of the confusingly intertwined "arising out of — scope of the employment" doctrines in Massachusetts, culminating in the *Bator* decision, provides an interesting study in the art of legal disengagement. Actually, it points up very clearly the fact that even today workmen's compensation is having trouble separating itself from "the old, barnacle-encrusted legal concepts" [4] of the common law that it was statutorily created to avoid.

On November 4, 1919, a cloth-dyeing-machine operator named George Koza was bothered, while working, by water dripping on him from a ventilator pipe above his head. He had in the past complained about this to his foreman, since the pipe was the property of the employer, and he had been promised that it would be taken care of for him. Nevertheless, the ventilator pipe continued to drip well and ventilate poorly. Koza, then, on the day in question, left his machine and started to go up on the roof of the building to see if he could fix the ventilator which rose above the roof nearest his machine. While on the roof for this purpose he fell, receiving serious, permanent injuries for which he sought compensation.

The Industrial Accident Board held that Koza's "act and purpose which moved him were so intimately connected with his employment conditions that the resulting injury [was] within the scope of his employment relation and . . . ar[ose] out of such employment." [5] However, the Supreme Judicial Court held that it was no part of the employee's occupation to repair the ventilator, that he engaged in an undertaking that was not within the scope of his employment and could not be found to arise out of it.[6] The Court held, then, that whether the employee was within the scope of his employment was not a question of fact but a matter of law, and further that the new statutory phrase "arising out of" was limited in concept by the restrictive old common-law phrase "scope of the employment."

Similar later cases met a similar fate,[7] and it was not until *Demetre's Case*[8] that the Court took a step out of the dense undergrowth of common-law restrictions. In that case, Demetre, who was a filling carrier employed by a cloth manufacturer, was injured while assisting a fellow employee, a weaver, to untangle a belt on her weaving machine. The

[3] O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 504, 506, 71 Sup. Ct. 470, 471, 95 L. Ed. 483, 486 (1951).

[4] Bear, Survey of the Legal Profession — Workmen's Compensation and the Lawyer, 51 Colum. L. Rev. 965, 969 (1951).

[5] Koza's Case, 236 Mass. 342, 344-345, 128 N.E. 400 (1920).

[6] 236 Mass. at 345, 128 N.E. at 400.

[7] See, e.g., Roberts' Case, 284 Mass. 316, 187 N.E. 556 (1933), holding that when an employee goes outside the scope of his employment and incurs a danger "of his own choosing" he cannot recover.

[8] 322 Mass. 95, 76 N.E.2d 140 (1947).

Board found that the employee, Demetre, did not incur a risk beyond the reasonable scope of his employment.[9]

The Supreme Judicial Court felt that the employee's attempt to restore the machine to a state of usefulness and the means he used to do so were not so unreasonable and so unrelated to the service he was employed for (merely to distribute filling in baskets to the weavers) that it could be said as a matter of law that the injury did not arise out of and in the course of the employment.[10] In support of its decision, the Court stated that the employee was not performing an act he had been forbidden to do,[11] a statement that was as true for the *Koza* and succeeding cases as in this one.

The Court stated that they felt the *Koza* line of cases were not "controlling." It is difficult to know whether the Court regarded the main issue here one of fact or one of law, but it is clear that they chose to expand the "scope of employment–arising out of" concept by hazy decision rather than clear-cut definition.

Such is the background of *Bator's Case*.[12] In this case the employee, who had been employed by his company for thirty years, was injured on his lunch hour. It was the custom of the employees, during lunch hour, to sit and rest or lie down in some of the large boxes or hand trucks that were in the preparing room where they worked. This was a custom known to the employer and not prohibited. The employee in this case was already in one of these boxes during the lunch hour, but since it contained jute he felt too hot in it and stepped to another box also containing jute. From there he attempted to get into a third box, and in the attempt fell, sustaining injury.

The single member of the Industrial Accident Board found the employee had voluntarily incurred a risk not contemplated by his employment, and found against him.[13] The review board, whose decision supersedes that of the single member and is controlling,[14] reversed, but the Superior Court issued a decree dismissing the employee's claim.[15]

The Supreme Judicial Court reversed, and ordered a decree entered for the employee. Its decision is important for two reasons: (1) it clearly held, for the first time, that whether an employee is in the scope of his employment in any given instance is a question of fact for the board to determine;[16] (2) it clearly held that the term "scope of the employment" can only be used "as [it] is understood for compensation

[9] 322 Mass. at 97, 76 N.E.2d at 141.
[10] 322 Mass. at 99, 76 N.E.2d at 142.
[11] Ibid.
[12] 338 Mass. 104, 153 N.E.2d 765 (1958).
[13] 338 Mass. at 104, 153 N.E.2d at 766.
[14] DePietro's Case, 284 Mass. 381, 385, 187 N.E. 773, 774 (1933).
[15] It should be stated here that negligence on the part of the employee has never been a bar to compensation recovery. Only the "serious and wilful misconduct" of the employee can bar him under the provisions of G.L., c. 152, §27, and no finding of serious and willful misconduct was ever made in any of the "scope of the employment" cases discussed in this section.
[16] 338 Mass. 104, 106, 153 N.E.2d 766, 767 (1958).

purposes," [17] and further, that it is to be understood for compensation purposes to have the same meaning as "arising out of" the employment,[18] which meaning is: "[an injury] aris[ing] out of the nature, conditions, obligations or incidents of the employment; in other words, out of the employment looked at in any of its aspects." [19] To the extent that there was "anything to the contrary" in *Koza* and other like cases, the Court stated: "We are not disposed to follow them." Thus has the Court finally shaken off the last of the restrictive common-law trappings in this area.

The Court is certainly to be congratulated for its decision in *Bator,* since it goes far toward putting the entire law of workmen's compensation in its proper perspective. But the confusion resulting from the use of both of the terms "scope of the employment" and "arising out of" could be eliminated by adopting the line of reasoning that "scope of the employment" as a term of art has no place in the compensation law.[20] The only test of compensability, in this area, should be whether the injury "arose out of" the employment, in the broadest sense of that term as defined by the Court in *Bator's Case.*

§18.2. Evidence: Burden of proof. One of the most important workmen's compensation cases of first impression to come before the Supreme Judicial Court in some time was, unfortunately, avoided by the Court through a rescript without opinion. As in all instances in which the Court exercises its unchallengeable prerogative to, in effect, deny certiorari to the appealing party, the cause for complaint on the part of the bar is not: Why did not this side or the other prevail? but rather: Why were not the central issues faced and examined thoroughly, and a decision made on the substantive merits?

Pinto's Case[1] holds the dubious distinction of being the only workmen's compensation rescript without opinion in the history of the Court to have been certified in the Superior Court as raising a substantial question of law within the meaning of G.L., c. 152, §11, and then to have been held by the Supreme Judicial Court for four and a half months subsequent to argument before being decided.[2] Both of these facts, incidentally, fail to appear anywhere in the rescript without opinion, a fate also suffered by most of the actual facts in the record of the case.

Sadi Pinto had been employed for two years by a meat packing concern. His job was to work one or two hours per evening in a hot smokehouse where meats were being cured. While inside he would sweat profusely. Immediately upon leaving the smokehouse he would change

17 338 Mass. at 106, 153 N.E.2d at 767.
18 Ibid.
19 Ibid.
20 The term "scope of the employment" is nowhere to be found in G.L., c. 152. See especially id. §26.

§18.2. 1 1959 Mass. Adv. Sh. 1167, 159 N.E.2d 329. A member of the author's law firm represented Pinto in this case.
2 Ibid.

his shirt, which was wet with sweat, in a locker room and then go to work in the company freezing room where his job was to hose down with cold water the frozen meats therein, preparatory to removing them from the cold room. He worked in this room three or four hours per night.[3] Except for a hernia operation in 1948 the employee testified he "was never sick up until August 1953." At work on August 1, 1953, he had the chills, was shivering, shaking and felt cold. He remained at work in this condition until August 11, when he consulted a doctor. Even after seeing the doctor, he continued to work until August 14, 1953. However, X-rays were taken on August 17 which showed tuberculosis, and on September 5 he was admitted to the Boston Sanitorium for tuberculars with acute active tuberculosis.[4]

The employer had knowledge of the employee's tubercular condition on September 3, two days prior to his admission to the hospital. The employee remained hospitalized in the sanitorium for forty-one consecutive weeks, and filed his claim for compensation three months after leaving the sanitorium. He remained under medical attention after leaving the sanitorium, and was, in fact, under medical care at the time of his hearing. At the time of his hearing his employer was still in business, and there were co-employees of Pinto's who were still at work for the employer.

At the hearing, a qualified tuberculosis specialist testified on Pinto's behalf that he examined the X-rays of the employee taken three days after he left work, that he further examined the Boston Sanitorium records, and that he himself examined and X-rayed the employee. He testified that there was tuberculosis in the employee's lungs which was caused to break down and become aggravated by his work, that he had activity going on that broke down and reached the point that was reached finally in August of 1953. He testified: "This is not conjectural or speculative; this is a thing that must have been going on." He further testified that Pinto's working conditions *"were responsible* for lowering his body resistance and lowered the resistance of his lungs to that respiratory infection, lowering his resistance to tuberculosis; the lowering of his resistance and the breakdown of tuberculosis *was due* to working conditions."[5] On cross-examination the doctor was asked: "Then it is true doctor, that if we assume that he had the dormant tubercular infection that it could have been lighted up or aggravated by his work." He answered: "Yes." On re-direct, he reiterated his original position as being that which he had testified to on direct examination.[6]

The insurer offered no evidence whatsoever. It presented no wit-

[3] Report of Member of the Industrial Accident Board, Sadi Pinto's Case, Case No. 12173, Supreme Judicial Court, February Sitting, 1959, Record, pp. 2-4, 12.

[4] Id., p. 4.

[5] Id., pp. 8-9 (emphasis supplied). It is also important to note that the record shows that the tuberculosis expert had actually gone into the hot smokeroom himself and knew the conditions there first-hand.

[6] Id., p. 11.

nesses and did not attempt on cross-examination to cast doubt on any portion of the employee's testimony, or that of his medical expert, except to point out that the employee felt he was in good health up to August, 1953, and that the doctor did not know when the original tuberculosis germs were contracted.

The employee's claim was aggravation and precipitation into an acute condition of a latent, dormant and quiescent tuberculosis. This has been a compensible condition in the Commonwealth, even in tort cases, for almost half a century.[7]

The single member, in his decision, made only one finding of fact: that the employee had been in good health up to 1953 with the exception of a hernia condition in 1948. After making this single finding, he went on to state: "After careful consideration of all the evidence, I find that the employee has failed to sustain the burden of proof that the pulmonary tuberculosis from which he suffered was caused or aggravated by his employment," [8] and dismissed the employee's claim. On review, the case was remanded for the purpose of making findings on the issue of claim and notice. The single member found that the employer had no notice of an industrial injury, that claim was not filed for a year and that the insurer was prejudiced. Again, there were no subsidiary findings. The review board affirmed and the Superior Court issued a decree dismissing the employee's claim; however, it certified to the Supreme Judicial Court that the claimant's appeal raised a substantial question of law within the meaning of G.L., c. 152, §11.[9]

In its *Pinto* decision, the Court stated that there was evidence that the employee was in good health until August 1, 1953. It did not state that this was lay evidence only, and that therefore no medical conclusions of any kind could be drawn from this evidence with regard to Pinto's tubercular condition that would not be reversible error.[10] The Court further stated, as though it were important, that the expert who testified for the employee had examined him a full year after his breakdown. It neglected to point out that his opinion was rendered with the assistance of original X-rays taken three days following the breakdown, and a substantial hospital record as well.[11]

The Court further stated that the expert testified that "assuming" the employee had had tuberculosis, there "could" have been a lessening of his general health because of working conditions that caused his tubercular breakdown.[12] It neglected to point out that the word "could" was used by insurance counsel in his question on cross-examination, and that both before and after that question the doctor testi-

[7] Larson v. Boston Elevated Railway Co., 212 Mass. 262, 267, 98 N.E. 1048, 1050 (1912).

[8] Record, p. 12.

[9] Superior Court, No. 70939 Eq., Record, p. 21.

[10] LeBlanc's Case, 334 Mass. 265, 267, 134 N.E.2d 900, 901 (1956); Josi's Case, 324 Mass. 415, 417-418, 86 N.E.2d 641, 643 (1949).

[11] 1959 Mass. Adv. Sh. 1167, 159 N.E.2d 329.

[12] Ibid.

fied positively that there was a medical causal relationship between the working conditions and the tubercular breakdown. It also neglected to point out that the medical expert "assumed" nothing, but stated as a positive fact on the basis of the X-rays taken three days after the breakdown that latent tubercular germs had existed.[13] Most important, it neglected to point out that the insurer submitted no evidence on its own behalf to rebut the employee's prima facie case.

In support of its holding, the Court cited only one case, *Schena's Case*,[14] another rescript without opinion. This case is hardly in point since it involved an unusual situation in which the employee claimed he originally contracted pulmonary tuberculosis at work, but presented no lay or medical evidence to establish that there were any tubercular germs at the place of work, and, further, presented no medical evidence whatsoever to establish a probable causal relationship between his work and his sickness.[15]

The important point with regard to the *Pinto* decision is not at all that if the Court had fairly set forth the facts in the case they would have been bound to find for the employee, but rather that if they had fairly set forth the facts in the case they would have been forced to face the important issues it raised, and to have resolved them in one way or another.

One of the central issues the Court avoided in *Pinto* was whether the ultimate findings of the board were consistent with the subsidiary findings, or, stated in another way, whether there were sufficient subsidiary findings in law upon which to base the general finding.[16] The Court has clearly held that when the evidence submitted by the employee is of such a character as to give rise to a reasonable inference contrary to the finding of the single member, then there must be sufficient subsidiary findings for the Court to examine in connection with the ultimate finding to determine the propriety of the latter, or the ultimate finding must, as a matter of law, fail as being too general.[17]

An equally important issue, however, is whether, when all the facts in the record were produced by the employee and clearly established a prima facie case, and when all of this evidence was uncontradicted, unimpeached, not inherently incredible and not on its face open to reasonable contrary inferences, it was erroneous as a matter of law for the board to enter a finding against the employee.

The argument for the insurer is a strong one. It is a herculean task indeed, in law, to prove a negative. Yet, let it be assumed in the present case that the insurer had presented medical evidence through a general practitioner licensed to practice medicine for only one month. Let it be further assumed that he testified, although he had never seen

[13] Cf. Williams' Case, 333 Mass. 271, 273, 130 N.E.2d 562, 563 (1955), as to testimony wrested from its context so as to disturb its meaning.

[14] 329 Mass. 767, 109 N.E.2d 174 (1952).

[15] Record, Schena's Case, 329 Mass. Papers and Briefs, Part 13, pp. 13-15 (1952).

[16] Roney's Case, 316 Mass. 732, 734, 56 N.E.2d 859, 863 (1944).

[17] Craddock's Case, 310 Mass. 116, 125-126, 37 N.E.2d 508, 513 (1941).

a tuberculosis case, and although he felt the employee's expert testimony must be accorded great weight, that he nevertheless felt it to be possible that no work relationship existed. No one would seriously doubt that a decision against the employee based upon this evidence could not stand. The insurer should hardly be placed in a better position for having submitted no evidence whatsoever.

Furthermore, although it is a truism in our compensation law that there is no appeal from findings of the board based upon questions of fact when there is any evidence to support them, it is likewise a truism that evidence to support them there must be![18] It also cannot be denied that credibility is for the trier of fact, but credibility cannot be, for the trier of fact, a carte blanche for action unsupportable on the record.

Let us assume a compensation case involving heart injury in which the only medical witness to testify is Dr. Paul Dudley White for the employee. Let us assume that he testified, without equivocation, that the employee's working conditions were responsible for his heart attack. If, under these circumstances, the board dismissed the employee's claim upon the ground that he failed to sustain the burden of proving that his injury was related to his work,[19] we would begin to wonder whether the credibility doctrine, rather than being held in high esteem as the wastebasket into which all sorts of incomprehensible decisions on the facts can be thrown and thus justified, ought not to be thrown into a wastebasket all of its own. And it should be clear that no valid distinction can be made, in a court of law, between Dr. White, as an expert in his field, and say, Dr. Smith, diplomate of the American Medical Association Board of Psychiatry and Neurology, in his.

Certainly, in the realm of credibility, the trier of facts should be entitled reasonably to exercise his prerogative to believe or disbelieve. Whenever there is conflicting evidence in any given case he must do this. When no evidence for disbelief is apparent on the face of the record, the trier of fact in compensation cases should not supply it without providing a thorough explanation therefor in his decision.[20]

A good case can be made, based upon a respectable body of established case law, for the proposition that the Industrial Accident Board is not warranted in disregarding uncontradicted, unimpeached testimony of a workmen's compensation claimant when it contains no inherent contradictions or improbabilities, and is not rendered doubtful by any other matters in evidence, and that a finding against the compensation claimant in such circumstances is error and reversible, as a matter of law.[21] Certainly, the Supreme Judicial Court has always held

[18] Roney's Case, 316 Mass. 732, 734-735, 56 N.E.2d 859, 863 (1944); Jameson's Case, 254 Mass. 371, 372-373, 150 N.E. 151 (1926).

[19] We are assuming here that, as was the case in Pinto, there was no factual dispute about the existence of the working conditions as described by the employee.

[20] Cf. Chase v. General Electric Co., 83 R.I. 269, 115 A.2d 683 (1955).

[21] Stiltner v. Industrial Commission, 77 Ariz. 69, 72, 267 P.2d 234, 235-236 (1954); Haller v. Northern Pump Co., 214 Minn. 404, 406, 8 N.W.2d 464, 465 (1943); Web-

that just as there must be evidence to support a finding for the claimant there must be evidence in the record to support a finding against him,[22] and the Court could further hold that when such evidence does not exist the finding against the employee should be reversed.[23]

These were the issues presented on the record, in the briefs, and in oral argument in *Pinto's Case.* The issue is not that the employee here was wronged in that his claim for compensation was denied, but rather that the employee, the insurer and the bar in general were, through an evasive rescript without opinion, denied their right to have these serious legal issues, now still undecided, resolved for the future.

B. Legislation

§18.3. Liens on workmen's compensation. Section 5 of G.L., c. 117, was amended by allowing a lien on the expected recovery of an employee from workmen's compensation.[1] If the employee obtains relief or support from a town as a result of an injury covered under the workmen's compensation act, the board of welfare of the town may require an assignment of the expected recovery. This would operate as a lien only to the extent of relief and support provided.

§18.4. Preference in re-employment. General Laws, c. 149, was amended by Acts of 1958, c. 593, to give preference to an injured worker, who has received workmen's compensation under Chapter 152, in re-employment by the employer for whom he worked at the time of his injury.[1] This preference is over other persons not previously employed by the employer, but the available employment must be suitable for the mental and physical well-being of the worker and within his qualifications.

Although the amendment uses the words "shall have preference," the sanctions for fulfilling the mandate of the statute are not apparent. Moreover, an injured person might have difficulty showing that he comes within the broad qualifications set forth in the new section. The objective of this amendment is most desirable but the amendment might well be strengthened to guarantee its meeting its objective.

---

ster Construction Co. v. Bates, 227 Miss. 207, 216, 85 So.2d 795, 798 (1957); Cain v. Robinson Lumber Co., 365 Mo. 1238, 1243, 273 S.W.2d 741, 744 (1955); Pietz v. Industrial Accident Board, 127 Mont. 316, 320-321, 264 P.2d 709, 711 (1953); Gaffey v. John J. Felin Co., 162 Pa. Super. 222, 57 A.2d 432 (1948); Valente v. Bourne Mills, 77 R.I. 274, 277-278, 75 A.2d 191, 193 (1950).

[22] Burgess' Case, 331 Mass. 90, 92, 117 N.E.2d 148, 149 (1954); Crichlow's Case, 329 Mass. 762, 106 N.E.2d 417 (1952) (compare with Schena's Case, 329 Mass. 767, 108 N.E.2d 926 (1952)); Nouse's Case, 326 Mass. 797, 92 N.E.2d 877 (1951); Wiencis' Case, 319 Mass. 553, 556, 66 N.E.2d 715, 717 (1946); Roney's Case, 316 Mass. 732, 734-735, 56 N.E.2d 859, 861-862 (1944).

[23] Villapando v. Industrial Commission, 70 Ariz. 55, 58-59, 216 P.2d 397, 400 (1950); Gagnon's Case, 144 Me. 131, 133, 65 A.2d 6, 8 (1949); Plucinski v. Rores Luncheonette, 277 App. Div. 803, 96 N.Y.S.2d 773 (2d Dept. 1950).

§18.3. [1] Acts of 1959, c. 395.

§18.4. [1] G.L., c. 149, §51B.

§18.5. The exclusion of certain homeowners as employers. General Laws, c. 152, §1(5), was amended to exclude as an employer, within the meaning of the statute, the owner of a dwelling house having not more than three apartments and who resides therein, or the occupant of a dwelling house of another who employs persons to do maintenance, construction or repair work on such dwelling house or on the grounds or buildings appurtenant thereto.[1]

§18.6. Specific compensation: Benefits structure.[1] General Laws, c. 152, §36(d), was amended by Acts of 1959, c. 230, to include coverage for a period of two hundred weeks for non-correctible eye injury which produces an inability to use both eyes together for single binocular vision.

Acts of 1959, c. 545, amends several other paragraphs of Section 36 to do away with an existing inequality. Heretofore, the loss of sight of both eyes carried an extra specific compensation benefit over and above double the singular loss of each eye.[2] No such provision for additional coverage for loss of both arms, hands, legs, or feet was allowed until this amendment. Under this new amendment the following benefits are awarded: For the loss of both legs by severance at the hip, a period of four hundred weeks;[3] for the loss of both feet at or above the ankle three hundred and twenty-five weeks;[4] for the loss of both hands three hundred weeks;[5] for the loss of both arms, four hundred weeks.[6] The period for bilateral loss of hearing has been increased from two hundred to three hundred weeks.[7]

The last paragraph of Section 36 has also been amended to strengthen that portion calling for payment of specific compensation to employees in one bulk sum.[8]

§18.7. Employee in non-insured employment injured outside the Commonwealth. General Laws, c. 152, §66 eliminated certain defenses in actions for personal injuries sustained by employees in the course of their employment. The purpose of this section was to place an employee of a non-subscribing employer under the workmen's compensation act as nearly as possible in the same position as an employee of an employer who was a subscriber.[1] It has not been clear whether Section 66 applied to personal injuries received by non-insured employees in the course of employment outside the Commonwealth, although it has always been true that employees in insured employment are entitled to the benefits of Chapter 152 for injuries sustained outside the Common-

§18.5. [1] Acts of 1958, c. 429.

§18.6. [1] See 1954 Ann. Surv. Mass. Law §22.2.
[2] G.L., c. 152, §§36(a), (b).
[3] Id. §36(n).
[4] Id. §36(o).
[5] Id. §36(s).
[6] Id. §36(t).
[7] Id. §36(f).
[8] Acts of 1959, c. 199.

§18.7. [1] Zarba v. Lane, 322 Mass. 132, 76 N.E.2d 318 (1948).

wealth.[2] Section 66 has now been amended to extend specifically its coverage to all personal injuries sustained by an employee in non-covered employment outside the Commonwealth.[3]

§18.8. Dependency benefits. General Laws, c. 152, §31 has been amended for the second time within four years[1] to increase the rates to the unmarried widow or widower of the employee from $25 a week to $30 a week.[2] The rates for both widow or widower and a child of the employee are increased from $30 a week to $35 a week. Upon the remarriage of the widow or widower, the children of the employee are to receive $10 a week in lieu of other payments, instead of the prior $7 a week. The equal payments provision to all children of the employee, if there is no surviving spouse, has been increased so that the limit any one individual may receive is $35 a week instead of $30 a week. The total amount of allowable payments has been increased from $10,000 to $14,000.

§18.9. Extension of coverage to regional school districts. Chapter 152, §69 of the General Laws was amended by Chapter 55 of the Acts of 1959 to extend optional coverage under the workmen's compensation act to workmen and mechanics employed by a regional school district. A vote of its regional district school committee is necessary to exercise this option.

§18.10. Weekly benefits structure.[1] Sections 34,[2] 34A,[3] and 35[4] of G.L., c. 152, were amended twice within the 1959 SURVEY year by Acts of 1958, c. 665, and Acts of 1959, c. 566.

Under the provisions of Chapter 665 of the Acts of 1958, effective January 15, 1959, temporary total disability benefits, permanent and total disability benefits and partial disability benefits were all raised to $40 per week. The maximum benefits allowable under the temporary total disability section remained at $10,000, while the partial disability benefits section was raised to $12,000. However, the amendment further provided for maximum payments of $12,000 when temporary total and partial benefits were paid for the same injury.

Under the provisions of Chapter 566 of the Acts of 1959, effective December 7, 1959, temporary total, permanent and total, and partial disability benefits have all been raised to $45 a week. The maximum benefits allowable under the temporary total section have been raised to $14,000, and, in connection with the partial benefits section, have been raised to $15,000. The amendment further provides for maximum payments of $15,000 when temporary total and partial benefits are paid for the same injury.

[2] G.L., c. 152, §26.
[3] Acts of 1959, c. 478.

§18.8. [1] See 1956 Ann. Surv. Mass. Law §19.8.
[2] Acts of 1959, c. 530.

§18.10. [1] See 1957 Ann. Surv. Mass. Law §30.7; 1956 Ann. Surv. Mass. Law §19.10.
[2] Temporary total disability benefits section.
[3] Permanent and total disability benefits section.
[4] Partial disability benefits section.

In addition, the weekly dependency provision of G.L., c. 152, §35A, has been raised from $4 to $6 per week by Chapter 566.

§18.11. Costs and counsel fees. The costs section of the workmen's compensation act[1] has been amended through the addition of a new Section 12A.[2] This new section, applicable in all discontinuance of compensation proceedings[3] in which the insurer is ordered to continue payments, makes mandatory the award of an amount sufficient to compensate the employee for the reasonable costs of the proceeding, including reasonable counsel fees.

§18.11. [1] G.L., c. 152, §12.
[2] Added by Acts of 1959, c. 585.
[3] G.L., c. 152, §29.